

SENATE BILL No. 52

DIGEST OF INTRODUCED BILL

Citations Affected: IC 15-7-7; IC 15-7-7.5.

Synopsis: Equipment suppliers and retailers. Establishes inventory repurchase requirements for farm, industrial, and outdoor power equipment suppliers. Requires a supplier to provide notice to a retailer before terminating a contract, unless certain circumstances exist. Prohibits certain practices by suppliers. Provides procedures for: (1) determining the repurchase price paid by a supplier to a retailer for inventory; (2) resolving warranty claims; and (3) continuing or creating contracts after the death or insolvency of a retailer. Provides civil penalties for violations.

Effective: July 1, 2006.

Nugent

January 9, 2006, read first time and referred to Committee on Agriculture and Small Business.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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SENATE BILL No. 52

A BILL FOR AN ACT to amend the Indiana Code concerning agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 15-7-7-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) This chapter applies to ~~the~~
3 ~~following:~~ ~~(1)~~ contracts that:
4 (1) may be terminated or altered at will; and
5 (2) ~~contracts are~~ formed or renewed after June 30, 1989;
6 **including retail agreements that are continuing contracts with no**
7 **expiration date.**
8 (b) This chapter shall not be construed to impair the obligation of a
9 contract in violation of Article 1, Section 24 of the Constitution of the
10 State of Indiana.
11 SECTION 2. IC 15-7-7-2.5 IS ADDED TO THE INDIANA CODE
12 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2006]: **Sec. 2.5. As used in this chapter, "contract" refers to a**
14 **written or an oral agreement between a supplier and a retailer**
15 **under which:**
16 (1) **the retailer agrees to:**
17 (A) **sell; and**



(B) maintain an inventory of;
 farm, industrial, and outdoor power equipment; and
 (2) the supplier agrees to supply farm, industrial, and outdoor
 power equipment to the retailer.

SECTION 3. IC 15-7-7-3 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this chapter, "current
 net price" means the price listed by a wholesaler, manufacturer, or
 distributor of inventory in effect of an inventory item recorded in a
 price list or catalog used by a supplier at the time a contract is
 terminated, less an applicable trade or cash discount.

SECTION 4. IC 15-7-7-4 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) As used in this chapter,
 "farm, or industrial, machinery" and outdoor power equipment"
 means:

- (1) farm implements;
- (2) tractors;
- (3) farm machinery;
- (4) utility and industrial equipment;
- (5) construction machinery, including track and wheel tractors,
 motor graders, and excavators; or
- (6) internal combustion or electrically powered equipment
 designed for use in:
 - (A) horticulture;
 - (B) floriculture;
 - (C) landscaping; or
 - (D) turf maintenance.

(b) The term includes attachments or and repair parts for one
 (1) or more machines referred to in subdivisions (1) through (5): an
 item described in subsection (a).

(c) As used in this chapter, "farm or industrial machinery" (c) The
 term does not include all terrain vehicles.

SECTION 5. IC 15-7-7-5 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2006]: Sec. 5. As used in this chapter,
 "inventory" means farm, or industrial machinery industrial, and
 outdoor power equipment held by a retailer.

SECTION 6. IC 15-7-7-6 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2006]: Sec. 6. As used in this chapter, "net
 cost" means the price a retailer paid to a wholesaler, manufacturer, or
 distributor supplier for inventory, minus any discounts, retainage, and
 prepaid freight or return freight.

SECTION 7. IC 15-7-7-8 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) As used in this chapter,

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"retailer" means a person engaged in the business of selling **farm, industrial, and outdoor power equipment** at retail. ~~farm or industrial machinery.~~

(b) The term does not include a retail seller of:

- (1) petroleum products, if the sale of petroleum products is the primary purpose of the retail seller's business;
- (2) motor vehicles (as defined in IC 9-13-2-105(a)); or
- (3) automotive care and replacement products.

includes a trustee, an heir, a personal representative, a guardian, or a receiver of a retailer.

(c) The term includes the heirs, personal representative, guardian, or receiver of a retailer. ~~does not include a person who is primarily engaged in the business of selling at retail:~~

- (1) petroleum products;
- (2) motor vehicles (as defined in IC 9-13-2-105(a)); or
- (3) automotive care and replacement products.

SECTION 8. IC 15-7-7-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 9.5. As used in this chapter, "superseded repair part" means a repair part that:**

- (1) is designed for use in repairing farm, industrial, and outdoor power equipment;
- (2) was purchased by a retailer from a supplier;
- (3) is no longer sold by the supplier on the date on which the contract between the supplier and the retailer is terminated; and
- (4) provides the same function as a part sold by the supplier on the date on which the contract between the supplier and the retailer is terminated.

SECTION 9. IC 15-7-7-9.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 9.6. As used in this chapter, "supplier" means:**

- (1) a manufacturer, wholesaler, or distributor that sells farm, industrial, and outdoor power equipment to a retailer;
- (2) a:
 - (A) purchaser of the assets;
 - (B) purchaser of the stock of a surviving corporation that results from a merger or liquidation;
 - (C) receiver; or
 - (D) trustee;
- of a person described in subdivision (1); or
- (3) the assignee of a person described in subdivision (1).

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SECTION 10. IC 15-7-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) Upon the termination of a ~~written or unwritten~~ contract between a retailer and a ~~wholesaler, manufacturer, or distributor of farm or industrial machinery under which the retailer had agreed to maintain an inventory,~~ **supplier**, the ~~wholesaler, manufacturer, or distributor~~ **supplier** shall repurchase the inventory of the retailer under section 11 of this chapter.

(b) If the retailer has an outstanding debt to the ~~wholesaler, manufacturer, or distributor,~~ **supplier**, the amount to be paid in repurchase of the inventory may be credited to the retailer's account.

(c) The requirement under subsection (a) that a ~~wholesaler, manufacturer, or distributor~~ **supplier** repurchase inventory does not apply when a contract is terminated based upon:

- (1) the conviction of the retailer (or a principal owner or operator of the retailer) of an offense involving theft, dishonesty, or false statement; or
- (2) a fraudulent misrepresentation by the retailer to the ~~wholesaler, manufacturer, or distributor~~ **supplier** that is material to the contract.

SECTION 11. IC 15-7-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) Except as provided in section 14 of this chapter, **if a contract is terminated**, a ~~wholesaler, manufacturer, or distributor~~ **supplier** shall repurchase the farm, ~~or industrial, machinery~~ **and outdoor power equipment** that:

- (1) the retailer previously purchased from the ~~wholesaler, manufacturer, or distributor,~~ **supplier**; and
- (2) the retailer held as inventory on the date of the termination of the contract.

(b) For the purposes of subsection (a)(1), proof of purchase from the supplier may include retail invoices from the supplier or a reference to an item in a current or past supplier price book.

SECTION 12. IC 15-7-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. (a) The price for a repurchase **under section 11 of this chapter** must equal **the sum of the following**:

- (1) One hundred percent (100%) of the net cost of all new, unsold, undamaged, and complete ~~farm or industrial machinery (except repair parts);~~ **and inventory, other than superseded repair parts.**
- (2) One hundred percent (100%) of the current net price of all new, unused, and undamaged **superseded** repair parts.
- (3) **An additional five percent (5%) of the current net price of**

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new, unused, and undamaged:

(A) repair parts; and

(B) superseded repair parts;

unless the supplier incurs the cost of packing and loading the repurchased parts.

(4) The fair market value of data processing hardware or software that the supplier required the retailer to acquire not more than five (5) years before the date on which the contract is terminated, including computer equipment required and approved by the supplier to communicate with the retailer. The fair market value of the property subject to repurchase under this subdivision is the difference between the:

(A) acquisition cost to the retailer at the time of purchase, including shipping, handling, and setup fees; and

(B) straight line depreciation of the property subject to repurchase under this subdivision over five (5) years.

(5) For specialized repair tools that the contract required the retailer to purchase:

(A) seventy-five percent (75%) of the current net price of tools purchased less than four (4) years before the date on which the contract is terminated; and

(B) fifty percent (50%) of the current net price of tools purchased at least four (4) and not more than seven (7) years before the date on which the contract is terminated.

To qualify for a repurchase price under this subdivision, a specialized repair tool must be unique to a supplier's product line and in complete and resalable condition.

(6) For inventory used by a retailer in demonstrations, including inventory leased primarily for demonstrations, the depreciated value described in the contract. If the depreciated value is not described in the contract, the repurchase price is the average value shown in the current industry valuation guide for the retailer's region. To qualify for a repurchase price under this subdivision, the inventory must be in new condition.

(b) ~~A wholesaler, manufacturer, or distributor~~ **This subsection applies to a supplier** that is required to repurchase ~~farm or industrial machinery inventory~~ from a retailer under this chapter. ~~shall pay freight charges incurred in shipping the farm or industrial machinery (except repair parts) back to the wholesaler, manufacturer, or distributor. However, the retailer:~~ **The supplier:**

(1) shall pay freight charges incurred in shipping ~~repair parts that~~

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are repurchased under this chapter ~~the inventory~~ back to the wholesaler, manufacturer, or distributor; **supplier**; and (2) is responsible for the ~~cost of~~ packaging of ~~all farm or industrial machinery that is repurchased from the retailer under this chapter the inventory~~ in preparation for the shipment of ~~that farm or industrial machinery the inventory~~ back to the wholesaler, manufacturer, or distributor. **supplier**.

SECTION 13. IC 15-7-7-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) Upon the payment to the retailer of the repurchase price under section 12 of this chapter, the title **and right of possession** to the inventory passes to the wholesaler, manufacturer, or distributor. **supplier**.

(b) Inventory repurchased by a supplier under this chapter may be sold to reduce a retailer's reserve account for a recourse contract, a retail sale contract, or a lease contract held by the supplier if:

- (1) notice of the proposed sale of the repurchased inventory is provided to the retailer at least seven (7) business days before the sale; and
- (2) the retailer is given the option to purchase the repurchased inventory not more than seven (7) business days after the date on which the notice described in subdivision (1) is received by the retailer.

This subsection does not require a supplier to provide notice and an option to purchase the repurchased inventory to a retailer if the supplier elects to dispose of the repurchased inventory in a manner other than a sale held for the express purpose of reducing a retailer's reserve account.

(c) A supplier that conducts a sale to reduce a retailer's reserve account shall reduce the retailer's reserve account by the amount the supplier receives from the sale of the repurchased inventory.

(d) A supplier shall provide a report to a retailer at the end of each calendar quarter detailing the status of each outstanding reserve account under a contract described in subsection (b).

SECTION 14. IC 15-7-7-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14. This chapter does not require the repurchase of any of the following:

- (1) A repair part **or superseded repair part** that has a limited storage life or is otherwise subject to deterioration, such as rubber items, gaskets, batteries, solvents, or lubricants.
- (2) A single repair part **or superseded repair part** that is priced as a set of two (2) or more items.

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(3) Inventory for which the retailer is unable to furnish evidence satisfactory to the ~~wholesaler, manufacturer, or distributor,~~ **supplier** of clear title, free and clear of all claims, liens, and encumbrances.

(4) Inventory that the retailer desires to keep, provided the retailer has a contractual right to keep the inventory.

(5) Inventory that is not in a new, unused **(other than inventory described in section 12(a)(6) of this chapter)**, and undamaged condition.

(6) Inventory that was ordered by the retailer on or after the date of notification of termination of the contract.

(7) Inventory that was acquired by the retailer from a source other than the ~~wholesaler, manufacturer, or distributor,~~ **supplier.**

(8) Complete farm, ~~and~~ industrial, ~~machinery,~~ **and outdoor power equipment,** except repair parts **and superseded repair parts,** that ~~were~~ **was** purchased thirty-six (36) months or more before the date of termination.

(9) A repair part **or a superseded repair part** that is in a broken or damaged package, if that package is necessary for the resale of the repair part **or the superseded repair part** to a customer by a retailer.

SECTION 15. IC 15-7-7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. A ~~wholesaler, manufacturer, or distributor~~ **supplier** that ~~fails or refuses to~~ **does not** repurchase inventory as required under this chapter within ninety (90) days after the termination of the contract is liable in a civil action to the retailer for:

- (1) one hundred percent (100%) of the current net price of **superseded** repair parts;
- (2) one hundred percent (100%) of the net cost of all other inventory;
- (3) the retailer's reasonable attorney's fees;
- (4) court costs; and
- (5) interest on the amounts determined under subdivisions (1) through (2), computed at a simple interest rate that is set by the court at no less than six percent (6%) per year and no more than ten percent (10%) per year, and beginning to accrue on the sixty-first day after the termination of the contract.

SECTION 16. IC 15-7-7-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. **(a)** Upon:

- (1)** the death or incapacitation of:
 - (A)** a retailer;

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(B) the majority shareholder of a retailer; or

(C) the controlling partner of a retailer; or if the retailer is a corporation,

(2) the insolvency of the retailer;

the ~~retailer's~~ heirs, personal representative, guardian, ~~or~~ receiver, **or trustee of a person described in subdivision (1)** may compel a ~~wholesaler, manufacturer, or distributor~~ **supplier** to repurchase the retailer's inventory under this chapter as if the retailer's contract had terminated.

(b) The retailer's heirs, personal representative, guardian, ~~or~~ receiver, **or trustee** must exercise the right provided by this section within ~~one hundred eighty (180)~~ **three hundred sixty-five (365)** days after the ~~retailer's~~ death, incapacitation, or insolvency **of a person described in subsection (a)(1).**

(c) ~~However,~~ This section does not require the repurchase of inventory if the heirs, personal representative, guardian, ~~or~~ receiver, **or trustee of a person described in subsection (a)(1)** enters into a new contract with the ~~wholesaler, manufacturer, or distributor.~~ **supplier.**

SECTION 17. IC 15-7-7-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 17. **(a)** A retailer ~~wholesaler, manufacturer, or distributor~~ **or supplier** may, in person or through a representative, inspect all inventory and certify its acceptability when it is packed for shipment to the ~~wholesaler, manufacturer, or distributor~~ **supplier** under a repurchase under this chapter.

(b) A supplier may not reject inventory if the sole basis for the rejection is an inspection and certification under subsection (a) performed more than fifty-nine (59) days after the date on which the contract between the supplier and retailer is terminated.

SECTION 18. IC 15-7-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. (a) This chapter does not affect a security interest that ~~the wholesaler, manufacturer, or distributor~~ **may have a supplier has** in a retailer's inventory.

(b) IC 26-1-6.1 does not apply to a repurchase of inventory under this chapter.

SECTION 19. IC 15-7-7-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 19. **(a)** Except as provided in subsection (b), not less than ninety (90) days before a supplier terminates a contract with a retailer, the supplier must provide the retailer with a written notice that:

(1) sets a date on which the supplier intends to terminate the

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contract;

(2) specifies the cause that is the basis for the termination of the contract; and

(3) sets a date at least sixty (60) days after the date of delivery of the written notice before which the retailer may cure each cause described in subdivision (2) to prevent termination of the contract.

If the retailer cures each cause specified under subdivision (2) before the date set under subdivision (3), the written notice is void.

(b) A supplier may terminate a contract without written notice if at least one (1) of the following conditions exists:

(1) The retailer does not comply with a contractual requirement. However, a supplier must provide written notice under subsection (a) if the alleged noncompliance involves a contractual requirement that is different from other contracts between the supplier and other similarly situated retailers.

(2) The retailer conducts a closeout sale on a substantial part of the retailer's inventory supplied by the supplier.

(3) A dissolution or liquidation proceeding begins with respect to the retailer.

(4) The retailer:

(A) changes the retailer's principal place of business; or

(B) adds locations;

without the prior approval of the supplier.

(5) The retailer substantially defaults under a:

(A) chattel mortgage; or

(B) security agreement;

between the retailer and the supplier.

(6) A guarantee of a present or future obligation of the retailer to the supplier is revoked or discontinued.

(7) The retailer:

(A) fails to operate in the normal course of business for seven (7) consecutive days; or

(B) abandons;

the farm, industrial, and outdoor power equipment business.

(8) The retailer is convicted of a felony that affects the relationship between the retailer and the supplier.

(9) The retailer transfers an interest in the farm, industrial, and outdoor power equipment business to another person.

(10) A person with a substantial interest in the ownership or control of the retailer:

(A) dies; or

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(B) substantially reduces the person's interest in the ownership or control of the retailer.

A supplier may not terminate a contract under this subsection if the supplier consents to a retailer's action described in subdivisions (1) through (9) or a person's action described in subdivision (10)(B).

SECTION 20. IC 15-7-7.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]:

Chapter 7.5. Farm, Industrial, and Outdoor Power Equipment Retailers

Sec. 1. The definitions in IC 15-7-7 apply throughout this chapter.

Sec. 2. A supplier may not do the following:

(1) Coerce a retailer to accept delivery of inventory that the retailer did not voluntarily order. This subdivision does not apply if the supplier is required by law to supply the inventory to the public.

(2) Condition a sale of inventory to a retailer on a requirement that the retailer purchase other goods or services, except that a supplier may require a retailer to purchase inventory reasonably necessary to maintain the quality of service required by the terms of a contract.

(3) Coerce a retailer into refusing to purchase inventory manufactured by another supplier.

(4) Terminate a contract based on the results of a natural disaster.

Sec. 3. (a) As used in this section, "claim" refers to a retailer's claim for reimbursement from a supplier for labor and materials provided by the retailer in connection with:

(1) conducting a repair; or

(2) furnishing a replacement part;

that is required under the supplier's warranty agreement with a consumer of the supplier's products.

(b) Before submitting a claim to a supplier, the retailer shall inform the supplier of the retailer's established hourly labor rate. A supplier is not required to process a claim if the retailer has not complied with this subsection.

(c) If a retailer submits a claim to a supplier:

(1) after the termination of a contract; and

(2) for labor or materials, or both, provided before the effective date of contract termination;

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the supplier shall approve or disapprove the claim not more than thirty (30) days after the supplier receives the claim. If a supplier fails to disapprove a claim within the time required by this subsection, the claim is considered to be approved and the supplier shall issue payment to the retailer not later than thirty (30) days after the date as of which the claim is considered to be approved.

(d) A supplier shall pay the following sum to a retailer for each approved claim:

(1) The total labor cost, calculated by multiplying the retailer's established hourly labor rate by the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours.

(2) The total cost for parts, calculated by adding the retailer's current net price for parts used, plus at least fifteen percent (15%) of the retailer's current net price.

(e) A supplier is not required to pay a retailer for labor or materials that are expressly excluded under the supplier's warranty to the consumer.

(f) A supplier must provide notice if the supplier disapproves a claim. The notice must:

(1) be provided not later than (30) days after the date on which the claim is disapproved; and

(2) specify each reason for the disapproval.

(g) If a warranty audit indicates that the amount of a claim is erroneous or if a claim not eligible for payment is paid in error, the:

(1) supplier, if the claim is underpaid, must pay the retailer the amount of the underpayment; or

(2) retailer, if the claim is:

(A) overpaid; or

(B) not eligible for payment and is paid in error;

must pay the supplier the amount of the overpayment or the amount of the ineligible claim paid in error.

Sec. 4. (a) As used in this section, "heir" means an heir of a deceased:

(1) retailer; or

(2) principal shareholder or partner of a retailer.

(b) An heir, a personal representative, a guardian, or a receiver may operate a retailer's business under the terms of an existing contract between the retailer and supplier if the supplier consents in writing to the operation of the business by the heir, personal representative, guardian, or receiver.

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1 (c) If an heir, a personal representative, a guardian, or a
 2 receiver makes an offer to enter into a new contract with a
 3 supplier, the supplier shall:

4 (1) accept the offer; or

5 (2) decline the offer;

6 not more than ninety (90) days after receipt of the offer. A supplier
 7 that declines an offer under this subsection must provide the heir,
 8 personal representative, guardian, or receiver with a written notice
 9 explaining the reason or reasons for the declination.

10 (d) Notwithstanding the other provisions of this section, if a
 11 valid agreement between a supplier and a retailer establishes a
 12 procedure for determining the successor of:

13 (1) the retailer;

14 (2) the principal shareholder of the retailer's corporation; or

15 (3) a partner of a retailer;

16 the agreement determines the successor. However, an agreement
 17 described in this subsection must be entered into before the death
 18 of the person described in subdivision (1), (2), or (3) to be
 19 considered a valid agreement under this subsection.

20 Sec. 5. (a) A supplier that violates this chapter or IC 15-7-7 is
 21 liable to a retailer for the following:

22 (1) Actual damages.

23 (2) Costs and reasonable attorney's fees.

24 (b) A retailer may be granted injunctive, declaratory, and other
 25 equitable relief that a court determines is appropriate in an action
 26 to enforce compliance with this chapter or IC 15-7-7.

27 SECTION 21. [EFFECTIVE JULY 1, 2006] (a) As used in this
 28 SECTION, "contract" has the meaning set forth in IC 15-7-7-2.5,
 29 as added by this act.

30 (b) Notwithstanding IC 15-7-7-1(a), as amended by this act:

31 (1) IC 15-7-7, as amended by this act; and

32 (2) IC 15-7-7.5, as added by this act;

33 apply only to contracts entered into, amended, or renewed after
 34 June 30, 2006.

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